

September 30, 2019

Mr. Kevin T. Garvey, R.L.A.
D.S. Thaler & Associates, Inc.
7115 Ambassador Drive
P.O. Box 47428
Baltimore, MD 21244-7428

RE: Enclave at Lyons Mill
Forest Conservation Variance
Tracking # 04-19-3044

Dear Mr. Garvey:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on July 19, 2019. This request would allow the removal of two (2) specimen trees to construct a four-story apartment building and associated parking and utilities on a 5-acre property currently developed as a day care center. One of the trees to be removed is a 50-inch DBH Norway maple in poor condition; the other is a 36-inch DBH red maple in fair condition. Both specimens are outside of forest and Forest Buffer. There are seven other specimen trees that will be preserved in Forest Buffer and/or Forest Conservation Easements.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The petitioner is proposing to redevelop the site as an apartment building. Given the distribution of the nine specimen trees across the 5-acre site, avoiding all of them would preclude the proposed development. However, a different and smaller development could possibly occur on the property. Therefore,

denying the variance would not deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to unique circumstances associated with the location of specimen trees throughout the site rather than general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. Granting the variance would result in a multi-family residential development within a neighborhood comprised of a mix of types and densities of residential developments. Therefore, we find that granting the variance will not alter the essential character of the mixed use neighborhood; thus, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The stream system onsite will be protected by a Forest Buffer Easement designed in strict accordance with Section 33-3-111 of the Law for the Protection of Streams Wetlands and Floodplains. The two specimen trees to be removed are outside of that buffer. Furthermore, storm water management (SWM) will be provided in accordance with current SWM law that requires water quality management of storm runoff. Therefore, we find that granting the variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has taken no actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Granting this variance to allow removal of two specimen trees would be consistent with the spirit and intent of the Forest Conservation Law given that one of the two is a non-native species, the remaining seven specimens will be protected in Forest Conservation Easement, and about half of the 2.1 acres of forest on the DR-16 zoned site will be retained in a contiguous fashion in and adjacent to the Forest Buffer Easement. Therefore, this criterion has been met.

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Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Mitigation for removing the one native specimen tree outside of forest in fair condition shall be addressed by paying a \$1,258.98 fee in lieu of mitigation planting. This mitigation is based on 25% of the tree's critical root zone. No mitigation is required for removing the nonnative Norway maple.
2. Specific tree protection measures for the seven specimen trees to remain shall be provided on the final forest conservation plan (FCP) which shall also reflect all applicable conditions of this variance and address required reforestation. The final FCP shall be approved prior to approval of any grading plan.
3. A note must be on all plans and plats stating:

“A special variance to the Forest Conservation Law was granted by Baltimore County Dept. of Environmental Protection & Sustainability on September 30, 2019 to allow the removal of two specimen trees. Conditions were placed on this approval including payment of a \$1,258.98 fee in lieu of mitigation.”

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If there are any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely,

David V. Lykens
Director

DVL/ges

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- c. Mr. Andrew Hanson, Lyons Mill Associates, LLC
Stillway Partnership, Owner
Ms. Marian Honeczy, Maryland Department of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Responsible Party's Signature

Date

Responsible Party's Printed Name